

MATTHEW J. HAFEY (SBN: 167122)  
mhafey@nicolaidesllp.com  
PATRICIA A. DAZA-LUU (SBN: 261564)  
pdazaluu@nicolaidesllp.com  
KARINA J. SILVA (SBN: 346188)  
ksilva@nicolaidesllp.com  
NICOLAIDES FINK THORPE  
MICHAELIDES SULLIVAN LLP  
777 S. Figueroa Street, Suite 750  
Los Angeles, CA 90017

Telephone: (213) 402-1245  
Facsimile: (213) 402-1246

Attorneys for Plaintiff,  
OHIO SECURITY INSURANCE COMPANY

**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA – SOUTHERN DIVISION**

OHIO SECURITY INSURANCE  
COMPANY,

Plaintiff,

v.

GREEN LEAF RENT A CAR &  
LEASING, INC., a California  
corporation; LOIS JEAN MARTYNS,  
an individual; WILLIAM D.  
ROBERTS, JR., an individual;  
IRENE ROBERTS, an individual,

Defendants.

Case No.

**COMPLAINT FOR  
DECLARATORY JUDGMENT**

1                   **COMPLAINT FOR DECLARATORY JUDGMENT**

2           Ohio Security Insurance Company (“Ohio Security”) alleges for its  
3 Complaint for Declaratory Judgment against Greenleaf Rental Car &  
4 Leasing (“Greenleaf Rental”) aka Green Leaf Rent a Car & Leasing, Inc.  
5 (“Green Leaf Rent a Car”) aka Greenleaf Rent a Car & Leasing, Inc.  
6 (“Greenleaf Rent a Car”) (collectively, “Green Leaf”), Lois Martyns  
7 (“Martyns”), William D. Roberts, Jr. (“W. Roberts”), and Irene Roberts (“I.  
8 Roberts”) as follows:

9                   **NATURE OF THE ACTION**

10           1.     Ohio Security seeks a declaratory judgment, pursuant to 28  
11 U.S.C. § 2201, that it owes no duty to defend or indemnify Greenleaf Rental,  
12 Green Leaf Rent a Car, or Greenleaf Rent a Car for a lawsuit filed by William  
13 Roberts styled *William Roberts v. Lois Jean Martyns; Greenleaf Rent a Car*  
14 *& Leasing, Inc.*, Superior Court of California, County of San Diego, Case  
15 No. 37-2022-00012563-CU-PA-NC (the “Roberts Lawsuit”). In pertinent  
16 part, the Roberts Lawsuit alleges that Greenleaf Rent a Car, whose  
17 employee was operating a sedan owned by Greenleaf Rent a Car, provided  
18 W. Roberts and I. Roberts with a ride from a car dealership to its rental car  
19 location in Carlsbad, California. W. Roberts was in the process of opening  
20 the passenger door and exiting from the sedan when another vehicle  
21 operated by Martyns suddenly backed into the partially opened door, which  
22 then closed on W. Roberts’ body, allegedly causing injury. The subject Ohio  
23 Security Policy is a Commercial General Liability policy, not an automobile  
24 liability policy, and contains a standard exclusion for “bodily injury” arising  
25 out of the maintenance, use or operation of an automobile which applies to  
26 these kinds of claims. Ohio Security thus seeks a declaration that no  
27 coverage is available under its policy with respect to the Roberts Lawsuit.

28    ///

**THE PARTIES**

2. Ohio Security is a New Hampshire corporation with its principal place of business in Boston, Massachusetts.

3. Ohio Security issued the Ohio Security Policy to “Greenleaf Rental Car & Leasing,” which is also known as Green Leaf Rent a Car & Leasing, Inc., and also known as Greenleaf Rent a Car & Leasing, Inc. and is referred to throughout this Complaint as “Green Leaf.” Green Leaf is a California corporation with its principal place of business 9922 Sunrise Lane, Santa Ana, California 92705.

4. Lois Jean Martyns (“Martyns”) is an individual who is a citizen of the State of California. Martyns has established or maintained a fixed residence, habitation or abode in Carlsbad, California, where she has resided since 1997 and intends to remain there permanently or indefinitely. Among other things, Martyns owns the house where she resides in Carlsbad, California, holds a drivers license issued by the State of California issued at that address, and was and is an active member of the Carlsbad, California community. At the time of the incident which is the subject of the underlying *Roberts* Action, Martyns had rented a vehicle owned by Green Leaf while her own vehicle was being repaired in a local automobile repair facility, and was in the process of driving that rental vehicle to her home in Carlsbad when the incident occurred.

5. William D. Roberts, Jr. (“W. Roberts”) is an individual who is a citizen of the State of California. W. Roberts has established or maintained a fixed residence, habitation or abode in Escondido, California, where he has resided for at least nine years and intends to remain there permanently or indefinitely. Among other things, W. Roberts owns the house where he resides in Escondido, California with his spouse, Irene Roberts, holds a drivers license issued by the State of California issued at that address, was

1 self-employed for 50 years as a real estate broker, Brooks & Dunphy Real  
2 Estate / Brooks & Dunphy Financial located in San Diego, California, and is  
3 an active member of the Escondido, California community.

4 6. Irene Roberts ("I. Roberts") is an individual who is a citizen of  
5 the State of California. I. Roberts is the spouse of W. Roberts and may  
6 make a claim for loss of consortium against Green Leaf and Martyns. I.  
7 Roberts has established or maintained a fixed residence, habitation or  
8 abode in Escondido, California, where she has resided for at least nine  
9 years and intends to remain there permanently or indefinitely. Among other  
10 things, I. Roberts owns the house where she resides in Escondido,  
11 California with W. Roberts, holds a drivers license issued by the State of  
12 California issued at that address, and is an active member of the Escondido,  
13 California community.

14 **JURISDICTION AND VENUE**

15 7. This Court has jurisdiction over this action pursuant to 28 U.S.C.  
16 § 2201(a) because Ohio Security seeks a declaration of its obligations to  
17 Green Leaf Rent a Car under a liability insurance policy.

18 8. This Court has jurisdiction over the subject matter of this action  
19 pursuant to 28 U.S.C. § 1332(a)(1), because complete diversity exists  
20 between the parties and the amount in controversy exceeds \$75,000,  
21 exclusive of interest and costs.

22 9. Venue is proper in this judicial district pursuant to 28 U.S.C.  
23 § 1391(b)(1), because the Ohio Security Policy was issued to Green Leaf at  
24 its principal place of business in 9922 Sunrise Lane, Santa Ana, California  
25 92705, which is the place where Green Leaf resides for purposes of venue.  
26 All defendants (Green Leaf, Martyns and W. Roberts and I. Roberts) reside  
27 in the State of California.

28 ///

**THE OHIO SECURITY POLICY**

10. Ohio Security issued Commercial General Liability policy no. BKS (20) 56 49 47 99 for the policy period April 30, 2019 to April 30, 2020 to named insured Greenleaf Rental Car & Leasing (the "Ohio Security Policy"), attached here as Exhibit 1 (with premium and rating information redacted) and incorporated by this reference.

11. The insuring agreement of the Ohio Security Policy's Commercial General Liability Coverage Form, Section I – Coverages, Coverage A – Bodily Injury and Property Damage Liability states, in part:

**COVERAGE A - BODILY INJURY AND PROPERTY DAMAGE  
LIABILITY**

**1. Insuring Agreement**

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. \* \* \*

12. The Ohio Security Policy includes an exclusion for "Aircraft, Auto, or Watercraft" (hereinafter, the "Auto Exclusion") applicable to Coverage A – Bodily Injury and Property Damage Liability, which states in pertinent part:

///

///

///

1                   **2. Exclusions**

2                   This insurance does not apply to:

3                   ...

4                   **g. Aircraft, Auto Or Watercraft**

5                   "Bodily injury" or "property damage" arising out of the  
6                   ownership, maintenance use or entrustment to others  
7                   of any aircraft, "auto" or watercraft owned or operated  
8                   by or rented or loaned to any insured. Use includes  
9                   operation and "loading or unloading".

10                  This exclusion applies even if the claims against any  
11                  insured allege negligence or other wrongdoing in the  
12                  supervision, hiring, employment, training or monitoring  
13                  of others by that insured, if the "occurrence" which  
14                  caused the "bodily injury" or "property damage"  
15                  involved the ownership, maintenance, use or  
16                  entrustment to others of any aircraft, "auto" or  
17                  watercraft that is owned or operated by or rented or  
18                  loaned to any insured.

19                  This exclusion does not apply to:

- 20                  **(1)** A watercraft while ashore on premises you own or  
21                  rent;
- 22                  **(2)** A watercraft you do not own that is:
- 23                          **(a)** Less than 26 feet long; and
- 24                          **(b)** Not being used to carry persons or property  
25                          for a charge;
- 26                  **(3)** Parking an "auto" on, or on the ways next to,  
27                  premises you own or rent, provided the "auto" is  
28

1 not owned by or rented or loaned to you or the  
2 insured;

3 **(4)** Liability assumed under any "insured contract" for  
4 the ownership, maintenance or use of aircraft or  
5 watercraft; or

6 **(5)** "Bodily injury" or "property damage" arising out of:

7 **(a)** The operation of machinery or equipment that  
8 is attached to, or part of, a land vehicle that  
9 would qualify under the definition of "mobile  
10 equipment" if it were not subject to a  
11 compulsory or financial responsibility law or  
12 other motor vehicle insurance law where it is  
13 licensed or principally garaged; or

14 **(b)** The operation of any of the machinery or  
15 equipment listed in Paragraph **f.(2) or f.(3)** of  
16 the definition of "mobile equipment".

17 ...

18 13. The Ohio Security Policy contains the following definitions under  
19 Section V – Definitions:

20 **1.** "Auto" means:

21 **a.** A land motor vehicle, trailer or semitrailer designed for  
22 travel on public roads, including any attached machinery  
23 or equipment; or

24 **b.** Any other land vehicle that is subject to a compulsory or  
25 financial responsibility law or other motor vehicle  
26 insurance law where it is licensed or principally garaged.

27 ...  
28

1       **3.** “Bodily Injury” means bodily injury, sickness or disease  
2       sustained by a person, including death resulting from any of  
3       these at any time.

4       ...

5       **13.** “Occurrence” means an accident, including continuous or  
6       repeated exposure to substantially the same general harmful  
7       conditions.

8       ...

9       **17.** “Property damage” means:

10       **a.** Physical injury to tangible property, including all resulting  
11       loss of use of that property. All such loss of use shall be  
12       deemed to occur at the time of the physical injury that  
13       caused it; or

14       **b.** Loss of use of tangible property that is not physically  
15       injured. All such loss of use shall be deemed to occur at  
16       the time of the “occurrence” that caused it.

17       For the purposes of this insurance, electronic data is not  
18       tangible property.

19       As used in this definition, electronic data means information,  
20       facts or programs stored as or on, created or used on, or  
21       transmitted to or from computer software, including systems  
22       and applications software, hard or floppy disks, CD-ROMs,  
23       tapes, drives, cells, data processing devices or any other  
24       media which are used with electronically controlled  
25       equipment.

26       ...

1       **18.** "Suit" means a civil proceeding in which damages because  
2       of "bodily injury", "property damage" or "personal and  
3       advertising injury" to which this insurance applies are alleged.

4       "Suit" includes:

5       **a.** An arbitration proceeding in which such damages are  
6       claimed and to which the insured must submit or does  
7       submit with our consent; or

8       **b.** Any other alternative dispute resolution proceeding in  
9       which such damages are claimed and to which the  
10      insured submits with our consent.

11                               **THE ROBERTS LAWSUIT**

12       14. On April 1, 2022, W. Roberts filed the Roberts Lawsuit against  
13      Martyns and Greenleaf Rent a Car (the "Complaint"),<sup>1</sup> attached here as  
14      Exhibit 2 and incorporated herein by this reference.

15       15. The Complaint alleges that Green Leaf is a rental car company  
16      that is "focused on low emission, electric and hybrid rentals." (Ex. 2 at ¶¶ 7-  
17      8).

18       16. The Complaint alleges that on November 11, 2019, W. Roberts  
19      and his wife, I. Roberts (collectively the "Roberts") wife were picked up by a  
20      Green Leaf employee operating a sedan owned and operated by Green  
21      Leaf at a nearby car dealership and driven to Green Leaf's location on  
22      Avenida Encinitas in Carlsbad, California to retrieve a rental car. (Ex. 2 at  
23      ¶ 10.)

---

26      <sup>1</sup> Again, there is some confusion as to names, in that the actual Named Insured on the  
27      Ohio Security Policy is "Greenleaf Rental Car & Leasing," which Ohio Security accepts  
28      is a typographical error. Accordingly, this Complaint seeks a declaratory judgment  
    binding Green Leaf as well as any other business organization who is alleged to be  
    responsible for Mr. Roberts' injury.

1           17. The Complaint alleges that upon arrival at the Avenida Encinitas  
2 location, the Green Leaf employee stopped the vehicle in the middle of the  
3 parking lot, in immediate proximity to a row of parked cars, informed W.  
4 Roberts and I. Roberts that they had arrived at the location, and told W.  
5 Roberts to leave the vehicle. (Ex. 2 at ¶ 11.)

6           18. As W. Roberts began to exit the Green Leaf sedan from the front  
7 passenger seat, he opened the door and stepped onto the pavement. In  
8 the meanwhile, Martyns placed her car in reverse and backed out of her  
9 parking spot. (Ex. 2 at ¶¶ 7-8.) Martyns' car collided with the open door of  
10 the Green Leaf sedan, which closed on W. Roberts' body and allegedly  
11 caused him injury. (Ex. 2 at ¶ 21.) W. Roberts' allegations are confirmed in  
12 his deposition and the deposition of I. Roberts, excerpts of which are  
13 attached as Exhibits "A" and "B" to Green Leaf's Motion to Contest  
14 Application for Determination of Good Faith Settlement, which is attached  
15 and incorporated by this reference as Exhibit 3.

16           19. As a result of this collision, W. Roberts alleges that he suffered  
17 serious injuries throughout his body, including to his head, back, neck,  
18 chest, right leg, right knee, right foot, and was transported to the emergency  
19 room. (Ex. 2 at ¶ 23.) The Complaint further alleges that W. Roberts has  
20 suffered, and continues to suffer severe physical pain and suffering and  
21 emotional distress, as well as other general and special damages, from  
22 these injuries to this day. (Ex. 2 at ¶ 24.)

23           20. W. Roberts alleges severe injuries in excess of \$75,000 as a  
24 result of the incident, which Green Leaf acknowledges in its Motion to  
25 Contest Application for Determination of Good Faith Settlement.

26                           **TENDER TO OHIO SECURITY**

27           21. On January 27, 2023 Green Leaf tendered the Roberts Lawsuit  
28 to Ohio Security for a defense under the Ohio Security Policy. Ohio Security

1 conducted an investigation and agreed to accept Green Leaf's defense  
2 subject to a written reservation of rights. Ohio Security is continuing to  
3 provide that defense, reserving, among other things, the right to seek a  
4 declaration from this Court that the Ohio Security Policy does not provide  
5 coverage for the Roberts Lawsuit, that Ohio Security has no duty to defend  
6 Green Leaf or to indemnify Green Leaf for the Roberts Lawsuit, and to seek  
7 recoupment of attorney's fees and costs expended in Green Leaf's behalf.

8  
9 **FIRST CLAIM FOR RELIEF**  
10 **DECLARATORY JUDGMENT AS TO THE DUTY TO DEFEND**  
11 **(AS TO GREEN LEAF)**

12 22. Ohio Security repeats and reincorporates here the allegations in  
13 paragraphs 1 through 21 above.

14 23. The Auto Exclusion in the Ohio Security Policy precludes  
15 coverage for "bodily injury" or "property damage" "arising out of the  
16 ownership, maintenance use or entrustment to others of any aircraft, 'auto'  
17 or watercraft owned or operated by or rented or loaned to any insured. Use  
18 includes operation and 'loading or unloading.'"

19 24. The Auto Exclusion in the Ohio Security Policy applies to  
20 preclude coverage according to the facts as alleged in the Complaint in the  
21 Roberts Lawsuit and as later adduced in discovery prior to the tender by  
22 Green Leaf to Ohio Security.

23 25. A true and correct controversy exists between Ohio Security, on  
24 the one hand, and Defendants on the other, in that Ohio Security contends  
25 that the Auto Exclusion applies to preclude coverage under the Ohio  
26 Security Policy for the Roberts Lawsuit, and therefore Ohio Security has no  
27 duty to defend Greenleaf Rental Car & Leasing, Green Leaf Rent a Car &  
28 Leasing, Inc. or Greenleaf Rent a Car & Leasing, Inc. with regard to the

1 Roberts Lawsuit. Ohio Security is informed and believes that Defendants  
2 contend otherwise.

3 26. A judicial determination is necessary to determine the respective  
4 rights of the parties hereto pursuant to the terms, conditions, exclusions and  
5 endorsements of the Ohio Security Policy.

6 27. Ohio Security therefore seeks a judicial determination that Ohio  
7 Security has no obligation to defend Greenleaf Rental Car & Leasing,  
8 Green Leaf Rent a Car & Leasing, Inc. or Greenleaf Rent a Car & Leasing,  
9 Inc. in connection with the Roberts Lawsuit.

10 **SECOND CLAIM FOR RELIEF**  
11 **DECLARATORY JUDGMENT AS TO THE DUTY TO INDEMNIFY**  
12 **(AS TO ALL DEFENDANTS)**

13 28. Ohio Security repeats and reincorporates here the allegations in  
14 paragraphs 1 through 27 above.

15 29. The Auto Exclusion in the Ohio Security Policy applies to  
16 preclude coverage according to the facts as alleged in the Complaint in the  
17 Roberts Lawsuit and as later adduced in discovery prior to the tender by  
18 Green Leaf to Ohio Security.

19 30. Upon the Court's determination that Ohio Security has and  
20 never had a duty to defend Greenleaf Rental Car & Leasing, Green Leaf  
21 Rent a Car & Leasing, Inc. or Greenleaf Rent a Car & Leasing, Inc. with  
22 regard to the Roberts Lawsuit, it may also issue a declaratory judgment that  
23 Ohio Security has and never had a duty to indemnify Greenleaf Rental Car  
24 & Leasing, Green Leaf Rent a Car & Leasing, Inc. or Greenleaf Rent a Car  
25 & Leasing, Inc. with regard to the Roberts Lawsuit.

26 31. As to defendants Martyns, W. Roberts and I. Roberts, if Ohio  
27 Security has no duty to indemnify Green Leaf with regard to the Roberts  
28 Lawsuit, this Court may also issue a declaratory judgment binding Martyns,

1 W. Roberts and I. Roberts to the judgment to foreclose the possibility of a  
2 lawsuit by Martyns, W. Roberts and I. Roberts as putative judgment  
3 creditors under Insurance Code § 11580(b) in the event Martyns, W.  
4 Roberts or I. Roberts obtain a judgment against Green Leaf arising out of  
5 the November 11, 2019 incident.

6 32. A true and correct controversy exists between Ohio Security, on  
7 the one hand, and Defendants on the other, in that Ohio Security contends  
8 that the Auto Exclusion applies to preclude coverage under the Ohio  
9 Security Policy for the Roberts Lawsuit, and therefore Ohio Security has no  
10 duty to indemnify Greenleaf Rental Car & Leasing, Green Leaf Rent a Car  
11 & Leasing, Inc. or Greenleaf Rent a Car & Leasing, Inc. with regard to the  
12 Roberts Lawsuit. Ohio Security is informed and believes that Defendants  
13 contend otherwise.

14 33. A judicial determination is necessary to determine the respective  
15 rights of the parties hereto pursuant to the terms, conditions, exclusions and  
16 endorsements of the Ohio Security Policy.

17 34. Ohio Security therefore seeks a judicial determination that Ohio  
18 Security has no obligation to indemnify Greenleaf Rental Car & Leasing,  
19 Green Leaf Rent a Car & Leasing, Inc. or Greenleaf Rent a Car & Leasing,  
20 Inc., or that Martyns, W. Roberts or I. Roberts have a right to recover against  
21 Ohio Security as a judgment creditor of Green Leaf in connection with the  
22 Roberts Lawsuit.

23 **THIRD CLAIM FOR RELIEF**  
24 **DECLARATORY RELIEF - RECOUPMENT**  
25 **(AS TO GREEN LEAF)**

26 35. Ohio Security repeats and reincorporates here the allegations in  
27 paragraphs 1 through 34 above.

28 36. A true and present controversy exists between Ohio Security,  
on the one hand, and Green Leaf on the other, in that Ohio Security

1 contends that upon a declaration from the Court that it never had a duty to  
2 defend Green Leaf against the Roberts Lawsuit, Ohio Security is entitled to  
3 recover from Green Leaf the attorney's fees and costs expended on Green  
4 Leaf's behalf from the date of its reservation of rights forward. Ohio Security  
5 is informed and believes that Green Leaf contends otherwise.

6 37. A judicial determination is necessary to determine the respective  
7 rights of the parties hereto pursuant to the terms, conditions, exclusions and  
8 endorsements of the Ohio Security Policy.

9 38. Upon such determination, Ohio Security is entitled to such  
10 recoupment from Green Leaf.

11 WHEREFORE, Ohio Security respectfully requests that the Court  
12 enter an order:

- 13 (a) Declaring that Ohio Security owes no duty to defend Greenleaf  
14 Rental Car & Leasing, Green Leaf Rent a Car & Leasing, Inc. or  
15 Greenleaf Rent a Car & Leasing, Inc. in the Roberts Lawsuit  
16 under Ohio Security Policy as coverage is excluded due to the  
17 Auto Exclusion; and
- 18 (b) Declaring that Ohio Security owes no duty to indemnify Green  
19 Leaf Rent a Car in the Roberts Lawsuit under Ohio Security  
20 Policy as coverage is excluded due to the Auto Exclusion; and
- 21 (c) Declaring that Martyns, W. Roberts and I. Roberts are bound by  
22 any judgment against Green Leaf, such that Martyns, W.  
23 Roberts or I. Roberts may not seek to enforce any judgment he  
24 / she may receive against Green Leaf against Ohio Security  
25 pursuant to Insurance Code § 11580(b) or otherwise;
- 26 (d) Declaring that Ohio Security is entitled to recover from Green  
27 Leaf the attorney's fees and costs it expends on the defense of  
28

1 Green Leaf in the Roberts Lawsuit upon a declaration that Ohio  
2 Security never had a duty to defend Green Leaf; and

3 (e) Granting such other relief as the Court deems just and proper.

4 Dated: April 26, 2023

NICOLAIDES FINK THORPE  
MICHAELIDES SULLIVAN LLP

5  
6  
7 By: /s/ Matthew J. Hafey  
Matthew J. Hafey  
8 Patricia A. Daza-Luu  
9 Karina J. Silva  
10 Attorneys for Plaintiff Ohio Security  
Insurance Company  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28